IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-4-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.4585 of 2003
W.P.M.P.Nos.5813 of 2003, 42883 of 2006

M. Sundersingh ... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 9.

2. The Director of Elementary Education,
College Road, Chennai - 6

3. The Chief Educational Officer,
Madurai District, Madurai.

4. The District Elementary Educational Officer,
Madurai District, Madurai.

5. The Assistant Elementary Educational Officer,
Vadipatti, Madurai District.

6. The Secretary,
Adi Dravida Aided Middle School,
Bodinaickenpatti, Vadipatti,
Madurai District. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of Certiorarified mandamus calling for the records of the first respondent in relation to G.O.Ms.No.155 (School Education (D2) Department, dated 3.10.2002 in respect of Clause 3(IV) of the said order insofar as it relates to the condition which prescribes the appointment shall be made through the Employment Exchange for the approval of appointment of B.Ed. Teachers in Secondary Grade Teachers vacancy and the order of the 4th respondent issued in N.K.No.9925/A4/2000 dated 21.9.2002 and quash the same and issue a consequential direction to the respondents to approve the appointment of the

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petitioner as Secondary Grade Teacher with effect from 7.1.1998 with service and monetary benefits in the 6th respondent's school.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.R.Lakshminarayan, Government Advocate

O R D E R

Prayer in the writ petition is to quash the order of the first respondent issued in G.O.Ms.No.155 School Education (D2) Department, dated 3.10.2002 in respect of Clause 3(IV) insofar as it relates to the condition prescribing the appointment shall be made through Employment Exchange for the approval of appointment of B.Ed Teachers in the Secondary Grade Teacher vacancy and the subsequent order of the 4th respondent dated 21.9.2002 and direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 7.1.1998 with all service and monetary benefits.

2. The brief facts of the case are that the petitioner is a B.A.,B.Ed., degree holder and he is qualified to be appointed as a teacher in the Government and Private Aided Schools. Petitioner was appointed as a Secondary Grade Teacher on 7.1.1998 in the 6th Respondent School, which is a fully aided school. As the petitioner was having higher qualification than the prescribed qualification, the management sent proposal for approval of his appointment to the 4th respondent, who in turn by order dated 6.9.2000 rejected the said proposal on the ground that B.Ed qualified Teacher should not be appointed in the post of Secondary Grade Teacher vacancy and only female teachers should be appointed upto 5th Standards, and that the appointment of the petitioner was not made after sponsorship through Employment Exchange.

3. Petitioner challenged the said order before this Court in W.P.No.18122 of 2000 and this Court by order dated 9.8.2002 observed that petitioner's case is covered by the decision of the Division Bench reported in 2002 WLR 173 (Secretary & Correspondent, Uswathun Hasane Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu). In the said judgment it is held that the Government shall give relief to the teachers who were appointed prior to the date of dismissal of the writ petition by the learned single Judge i.e., on 19.5.1998. The said writ petition which was dismissed on 19.5.1998, arose due to the challenge made by similarly placed teachers and management, challenging G.O.Ms.No.559 dated 11.7.1995, which prohibited appointment of the B.Ed qualified teachers in the Secondary grade

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Teacher vacancy. Prior to the said order, B.Ed. Qualified teachers were appointed in the secondary grade teacher vacancy and their appointments were also approved. Petitioners in the above batch of cases, who were aggrieved due to the dismissal of the writ petitions on 19.5.1998 filed writ appeals before the Division Bench and the Division Bench in the above referred reported judgment, taking note of the facts, held that the appointments made upto the date of dismissal of the writ petitions can be saved and the modalities as to how the said appointments can be approved by giving necessary training, among other things, shall be decided by the Government.

4. The Government thereafter issued G.O.Ms.No.155 School Education Department dated 3.10.2002 and ordered to give training to the teachers appointed from 11.7.1995 to 19.5.1998. In the said Government Order, a clause was introduced stating that the appointment of the teachers, who are to be given training, should have been made through the sponsorship of Employment Exchange and appointment should have been made by following the communal roaster. The said Government Order was subsequently modified by issuing G.O.Ms.No.34 dated 17.3.2003 and the condition imposed in G.O.Ms.No.155 that the appointments made in non-minority schools without reference to Employment Exchanges may also be found valid and they should also be given training and to that effect the rule was relaxed.

5. The learned counsel for the petitioner therefore submitted that the petitioner having been appointed prior to 19.5.1998 i.e., on 7.1.1998 in the 6th respondent Aided School, he is entitled to get training from the District Institute of Education and Training (D.I.E.T.) for one month as per G.O.Ms.No.155 dated 3.10.2002 and the petitioner is entitled to get salary from 2.6.2003, the date of completion of training as it was given to all other similarly placed persons. The learned counsel further submitted that the 4th respondent instead of sending the petitioner for training, had chosen to reject the request of the petitioner on 21.9.2002 by stating that the petitioner's appointment is contrary to G.O.Ms.No.559 dated 10.7.1995, and only lady teachers can be appointed upto standards 1 to 5, and that the petitioner's name having not been sponsored through Employment Exchange, his appointment cannot be approved. At this juncture it is relevant to note that the said order was passed prior to issuance of G.O.Ms.No.155 dated 3.10.2002. Therefore the learned counsel for the petitioner submitted that the petitioner is entitled to get his appointment approved and he is bound to get one month Child Psychology Training and at least from 2.6.2003, he shall be paid salary at the time scale of pay and the petitioner's service from 7.1.1998 shall be counted for the purpose of pension as ordered by the Division Bench of this

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Court in the decision reported in 2004 (2) LW 591 (The State of Tamil Nadu & Others v. Pallivasal Primary School).

6. The learned Government Advocate submitted that the petitioner's case is bound to be considered only in accordance with G.O.Ms.No.155 dated 3.10.2002 and G.O.Ms.No.34 dated 17.3.2003.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

8. The point in issue in this writ petition is covered by the decision of this Court reported in 2002 WLR 173 (Secretary & Correspondent, Uswathun Hasane Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu). A Division Bench of this Court while upholding G.O.Ms.No.559 dated 11.7.1995 held that B.Ed qualified Teachers, appointed in Secondary Grade Teachers vacancy upto the dismissal of the writ petition are entitled to get relief and the Government was directed to formulate the modalities. The date of order in the writ petition by the learned single Judge is 19.5.1998. Petitioner having been appointed in the 6th respondent school as Secondary Grade Teacher on 7.1.1998, his appointment is covered by the said Division Bench judgment cited above.

9. The Government for implementing the said judgment, issued G.O.Ms.No.155 and granted relief to the Teachers appointed upto 19.5.1998 by giving one month Child Psychology Training. The earlier condition imposed that the Teachers shall be appointed through Employment Exchange and following communal roaster was also removed by the subsequent G.O.Ms.No.34 dated 17.3.2003. In view of the said order, there is no impediment for the grant of approval of the appointment of the petitioner by the respondents after giving one month Child Psychology Training.

10. The only other reason stated in the impugned order is that in Standards 1 to 5, only female teachers can be appointed. The said condition was also removed by the Government by issuing subsequent Government Orders and now only 1/3rd Posts are reserved for women Teachers. In view of the removal of all disqualifications attached to the petitioner's appointment by subsequent Government Orders, petitioner is entitled to get his appointment approved and it is for the respondents to arrange for giving one month Child Psychology Training to the petitioner to satisfy the condition imposed in G.O.Ms.No.155 dated 3.10.2002.

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11. The learned counsel for the petitioner submitted that the petitioner is continuously working without getting salary. Petitioner is to be paid salary from 2.6.2003 as it has been given to other similarly placed Teachers. As and when Child Psychology Training is given through D.I.E.T., the petitioner shall undergo the said training. The service of the petitioner from 7.1.1998 to 2.6.2003 shall be counted for pension purposes only as held by the Division Bench decision reported in 2004 (2) LW 591 (The State of Tamil Nadu & Others v. Pallivasal Primary School). Denial of sending the petitioner for training is due to the fault of the respondents and therefore the same cannot be put against the petitioner for delaying payment of his salary.

12. The learned counsel for the petitioner submitted that as and when petitioner is sent for training through D.I.E.T., he is willing to undergo the same and the said undertaking is recorded. The prayer for quashing Clause 3(IV) in G.O.Ms.No.155 dated 3.10.2002 has become infructuous in view of the issuance of subsequent G.O.Ms.No.34 on 17.3.2003. The consequential order of the 4th respondent dated 21.9.2002 is quashed with a direction to the respondents to approve the appointment of the petitioner on 2.6.2003 and count petitioner's service for pension from 7.1.1998.

The writ petition is ordered in the above terms. No costs. Connected WPMPs are closed.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, School Education Department, Fort St.George, Chennai - 9.

2. The Director of Elementary Education, College Road, Chennai - 6

3. The Chief Educational Officer, Madurai District, Madurai.

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Bodinaickenpatti, Vadipatti, Madurai District.

+ 1 cc to Mr.R. Saseetharan, Advocate SR No.18714

KLT(CO)
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